IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: November 13, 2006

Mohd. Fahim son of Mohd. Naim, resident of Shafa Khana Masjid Hazrata Jalalabad Afganistan (now in Judicial Custody-Central Jail, Amritsar).

....Appellant

Versus

1. State of Punjab.
2. Inspector of Customs, Raja Sansi Airport, Amritsar.

...Respondents

CORAM: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. P.S. Hundal and Mr. R.S. Ahuja, Advocates,
for the appellant.

Mr. M.S. Sidhu, Sr. Deputy Advocate, General, Punjab
for respondent No.1.

None for respondent No.2.

Virender Singh, J.

Appellant Mohd. Fahim son of Mohd. Naim, resident of Shafa Khana Masjid Hazrata Jalalabad stands convicted under

Sections 21 and 23 of the Narcotic Drugs Psychotropic Substances Act (hereinafter referred to as "the Act") vide impugned judgment of learned Additional Sessions Judge-cum-Special Judge, Amritsar dated December 8, 2000. On both the counts the appellant has been sentenced to undergo rigorous imprisonment for a period of 12 (twelve) years each with a fine of Rs.1.00 lac each, in default thereof to further undergo R.I. for six months. However, both the sentences were ordered to run concurrently.

Aggrieved by the said judgment of conviction and sentence, he has preferred the present appeal.

In brief, the case of the prosecution is that on 11.8.1997, the appellant had alighted from Flight No.FG-300 of Ariana Afghan Air Lines at Raja Sansi Airport at 12.30 P.M. and appeared before the immigration authority. Since he was not having proper visa, he was thoroughly checked. His bags were also checked with X-rays machine. He was having a cardboard carton containing Cigarettes and three carpets. A suspicion arose in the mind of Jagjit Singh Inspector Customs (PW1) who informed his superior officers. The appellant was asked as to whether he was carrying some narcotic to which he replied in negative. Thereafter, an offer was given to him with regard to compliance of Section 50 of the Act regarding which a consent memo Ex.PE was prepared which was thumb marked by him. Shri K.K. Gupta, Superintendent Customs and two independent

witnesses, namely, Balwinder Singh and Surjit Singh and other officials of the Custom Department were also present at the spot. Layers of the walls of the carton were separated in their presence from each other. 40 packets wrapped in a polythene bags containing some white powder were noticed. One packet was taken out which was subjected to test with the help of drug detection kit and the same showed positive result of heroin. All the packets were then given Sr. Nos.1 to 40 in two lots, each containing 20 packets. Three samples were drawn from both the lots and were sealed with the seal of Custom Division, Amritsar. Packets of cigarettes cardboard and three carpets were also taken into possession. Recovery memo was prepared at the spot which was attested by the independent witnesses. Panchnama was also prepared which was attested by the aforesaid witnesses and Shri K.K. Gupta, Superintendent Customs (PW2). Arrest memo of the appellant was also prepared which was thumb marked by the appellant. His personal search memo was also prepared. All other requisite formalities were also completed at the spot. Gross weight of the brown sugar was 2.580 Kgs and net weight was 2.540 Kgs. On the next day i.e. 12.8.1997, the appellant made voluntary statement which was thumb marked by the appellant. On 13.8.1997 the appellant was produced before the concerned Magistrate. After the receipt of the Chemical Examiner's report, the complaint was filed against the appellant.

After the prosecution had concluded its evidence, all the incriminating evidence was put to the appellant. He pleaded his false implication in this case. After appreciating the entire evidence, the appellant has been convicted and sentenced as indicated above.

We have heard Mr. P.S. Hundal and Mr. R.S. Ahuja, Advocates, learned counsel for the appellant and Mr. M.S. Sidhu, learned Senior Addl. Advocate General, Punjab for respondent No.1. However, no one has come present on behalf of respondent No.2 (Customs Department) to assist this Court.

Mr. Hundal without joining any issue on the merits of the case, has confined his arguments with regard to reduction in the quantum of sentence only submitting that it is the case of the customs authority itself as is clear from the allegations contained in para 3 of the complaint that the appellant in his voluntary statement, after admitting the recovery of the contraband from him stated that the same was handed over to him by one Abdul Gaffar at Jallalabad Airport and he had to deliver the contraband to a person at Sara Lodge Hotel, Old Delhi as per the direction of his co-passenger Mohd. Yasin from whom 17.650 Kgs of heroin was recovered on the same day. From this Mr. Hundal develops that the appellant was a carrier who had to supply the contraband at a particular destination. Even otherwise it is clear from the opening line of the impugned judgment that he was a labourer. He has not a previous bad record

and, therefore, he deserves some concession in reduction of the substantive sentence.

In support of his contentions Mr. Hundal relies upon a Division Bench judgment of this Court rendered in ***Inder Singh vs. Inspector Customs,*** 2004 (2) R.C.R. (Criminal) 203 wherein recovery of 10.79 Kgs of heroin was effected from the accused and ultimately while confirming his conviction, the sentence of fifteen years awarded to him was reduced to ten years rigorous imprisonment observing that he was a carrier.

The prayer for reduction in quantum of sentence is opposed by the learned State counsel.

Although the impugned judgment is not assailed on merits yet we being the Court of first appeal have gone through the entire case once again and are of the view that the conviction of the appellant on both the counts as already recorded by the trial Court deserves to be upheld. Ordered accordingly.

However, we find substance in the submissions made by Mr. Hundal with regard to the sentence part. Admittedly, the appellant was a carrier as is clear from his voluntary statement suffered by him on the next day of the alleged recovery in which he stated that he was carrying the contraband on the instructions of some one and had to deliver to a particular person in Delhi. He was labourer as is clear from the impugned judgment also. The authority

Inder Singh's case (supra) cited by Mr. Hundal does cover the case of the appellant on this aspect.

Keeping in view the totality of facts and circumstances of the instant case, we hereby reduce the sentence of twelve years each awarded to the appellant on both the counts i.e. under Sections 21 and 23 of the Act to ten years rigorous imprisonment. The sentence of fine of Rs.1.00 lac on both the counts shall remain as it is being the minimum as provided under the statute. Both the reduced sentences shall run concurrently as already observed by the learned trial Court.

The net result is that the instant appeal stands dismissed except with the modification in the quantum of sentence as indicated herein above.

(Virender Singh)
Judge

(A.N. Jindal),
Judge

November 13, 2006
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